
EEOC Issues Updated Guidance on Pregnancy Discrimination and Related Issues

By Nicole M. Paterson / Jul 17, 2014

As the number of pregnancy discrimination claims continue to rise, the Equal Employment Opportunity Commission ("EEOC") issued a publication entitled "[Enforcement Guidance: Pregnancy Discrimination and Related Issues](#) ." In addition to the "Enforcement Guidance," the EEOC issued a Fact Sheet for Small Businesses and a Q&A; which discusses the guidance. The guidance makes clear that harassment and discrimination on the basis of pregnancy is a form of sex discrimination and is unlawful.

The publication marks the first comprehensive guidance from the EEOC on pregnancy in the workplace in over 30 years, although it does not come without some controversy. Initially, the EEOC only narrowly approved the guidance by a vote of 3-2 with the two dissenters sharply criticizing portions of the guidance as well as its timing in light of the U.S. Supreme Court's decision to review *Young v. United Parcel Service Inc* . The *Young* case will decide whether, and under what circumstances, an employer that offers a limited light duty to non-pregnant employees must offer the same light duty to pregnant employees.

The Pregnancy Discrimination Act

The guidance provides significant insight into the EEOC's interpretation of the Pregnancy Discrimination Act ("PDA"). Topics related to the PDA include:

- The PDA's prohibition of discrimination on the basis of: current pregnancy; past pregnancy; potential or intended pregnancy; infertility; and medical conditions related to pregnancy or childbirth. The PDA also prohibits discrimination on the basis of an employee's caregiver responsibilities.
- Lactation as a covered pregnancy-related medical condition. An employer must afford the same access to lactating employees to address their lactating needs as it does to other employees to address similarly limiting medical conditions.
- The requirement that an employer treat pregnant employees the same as non-pregnant employees similar in their ability or inability to work for purposes of leave and light duty. As an example, an employer that provides light duty to employees suffering from work-related injuries must provide the same light duty to pregnant employees similarly unable to work. However, an employer may apply the restrictions of its light duty program, such as a waiting period or limit on the number of light duty positions, to pregnant employees so long as it applies those same restrictions to non-pregnant employees similar in their ability or inability to work.
- Employers may not force a pregnant employee who is able to perform her job to take a leave of absence. Doing so is not made legal by an employer's belief that it is acting in the best interest of the pregnant employee.
- The requirement that parental leave (defined as leave for the purpose of bonding with a child and/or providing care for a child) must be equally extended to similarly situated men and women.

The Americans with Disabilities Act

The guidance reaffirms that under the 2008 amendments to the Americans with Disabilities Act ("ADA"), the term "disability" should be broadly construed and, while pregnancy itself is not a disability under the ADA, pregnancy-related impairments may qualify as a disability. Topics related to the ADA include:

- Pregnancy-related impairments are disabilities if they substantially limit one or more major life activity and can include: pregnancy-related sciatica which limits musculoskeletal functions; gestational diabetes which limits endocrine functions; and preeclampsia which causes high blood pressure affecting cardiovascular and circulatory functions.
- The circumstances under which an employer must provide reasonable accommodations to pregnant employees and types of reasonable accommodations.

Best Practices

The guidance includes a series of "best practices" for employers to adopt: developing and enforcing leave, light duty, and related policies that comply with the guidance; regularly training managers and employees on their rights and responsibilities related to pregnancy, childbirth, and related medical conditions; and adopting nondiscriminatory hiring practices.

Conclusion

The EEOC's guidance is a watershed moment in pregnancy discrimination law and will influence employers' practices with regard to accommodations, leaves, and benefits. While it is unclear as to what, if any, impact the U.S. Supreme Court's review of *Young* will have on the EEOC's guidance, until then, employers are well-advised to review their policies and practices for compliance with the guidance.

If you have any questions about how the EEOC's Pregnancy Guidance impacts your business or workplace, please contact Nicole M. Paterson at (616) 608-1139, npaterson@clarkhill.com , or another Clark Hill Labor and Employment attorney.